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Committee against Torture

Communication No. 613/2014

Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

Submitted by	F.B. (represented by counsel Joëlla Bravo Mougán)
Alleged victim	The complainant
State party	The Netherlands
Date of complaint	12 June 2014 (initial submission)
Date of present decision	20 November 2015
Subject matter	Deportation to Guinea
Procedural issues	None
Substantive issues	Non-refoulement; risk of torture upon return to country of origin
Articles of the Convention	3

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Communication No. 613/2014*

Submitted by:	F.B. (represented by counsel Joëlla Bravo Mougán)
Alleged victim:	The complainant
State party:	The Netherlands
Date of complaint:	12 June 2014 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 20 November 2015,

Having concluded its consideration of complaint No. 613/2014, submitted to it by F.B. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is F.B., a national of Guinea born on 28 December 1987, who is currently living in the Netherlands. She claims that her deportation to Guinea by the State party would constitute a violation of her rights under article 3 of the Convention. She is represented by counsel.

1.2 On 18 June 2014, pursuant to rule 114, paragraph 1, of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from returning the complainant to Guinea while her complaint was being considered by the Committee. On 10 July 2014, the Immigration and Naturalization Service informed the complainant that it would refrain from removing her in accordance with the Committee's request.

The facts as presented by the complainant

2.1 The complainant was born in Monrovia, Liberia. Her father is Guinean and her mother is Liberian. Together with her parents, she moved to Guinea when she was a baby.

* The following members of the Committee participated in the consideration of the present communication: Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

The complainant belongs to the Peul (Fula or Pular) ethnic group. She speaks and understands French, Pular, Malinke and Soussou. In Guinea, the complainant lived with her paternal stepgrandmother, F.D., her stepgrandmother's brother, M.S.D., and his wife, M.B. She lived in the Simbaya Cosa neighbourhood, in Conakry, where she attended primary school. In 2001, she was forced to undergo female genital mutilation by her stepgrandmother, in poor hygienic conditions, without anaesthesia/painkillers and disinfected scissors. Afterwards, the complainant left school and was forced to sell water and corn. On 5 August 2003, she was forced to marry her stepgrandmother's brother, because his then wife had not given birth to any children. The complainant claims that her stepgrandmother's brother sexually abused her.

2.2 In October 2003, at the age of 16 years, the complainant arrived in the Netherlands with the help of a travel agent. Upon her arrival, she was forced to have sex with the travel agent, but she managed to escape after one week and instantly reported the incident to the police. On 20 October 2003, she filed an application for asylum with the Immigration and Naturalization Service, which was rejected on 23 December 2005. Her application for judicial review against the Immigration and Naturalization Service's decision was dismissed by the Regional Court of 's-Hertogenbosch on 27 June 2007, as her accounts were not found to be credible. Afterwards, on 11 August 2008, she submitted a second application for asylum to the Immigration and Naturalization Service, which was rejected on 6 January 2009. Her subsequent application for judicial review and appeal were rejected by the Regional Court of Utrecht and the Administrative Jurisdiction Division of the Council of State on 27 October 2009 and 28 January 2010, respectively. In both applications for asylum, the complainant claimed that she feared being forced to continue the marriage with her stepgrandmother's brother. In addition, in her second application, she also submitted that she feared to be subjected to further female genital mutilation.

2.3 In April 2013, the complainant underwent reconstructive genital surgery in the State party.

2.4 On 25 July 2013, the complainant filed a third application for asylum before the Immigration and Naturalization Service. She claimed, for the first time, that she had been forced to undergo female genital mutilation and to marry an old man when she was in Guinea; and that she feared being forced to suffer such mutilation again after undergoing reconstructive genital surgery in the Netherlands. She submitted as documentary evidence a statement of the plastic surgeon who had carried out the surgery. In the interview held with the Immigration and Naturalization Service on 29 July 2013, she described the mutilation she had undergone in Guinea. She argued that it caused her severe physical damage and anxiety; that she did not like her body and was unable to establish a relationship with a man; that, therefore, she had decided to undergo a reversal surgery in the State party; that she was afraid of her stepgrandmother and of her husband if she returned to Guinea, because they would treat her even worse since they would assume that she had been working as a prostitute in the Netherlands; and that she would be forced to undergo such mutilation again.

2.5 On 1 August 2013, her third asylum request was denied by the Immigration and Naturalization Service, which also imposed on the complainant a two-year entry ban. According to her, the Immigration and Naturalization Service stated that her fear of being subjected to female genital mutilation again was not a new fact or circumstance as required by article 4:6 of the General Administrative Law Act and the relevant case law. The complainant appealed against this decision before the Regional Court of The Hague.

2.6 On 6 September 2013, the Regional Court of The Hague rejected the complainant's appeal. It stated that, as found in the ruling of the Regional Court of Utrecht of 29 October 2009, the complainant did not prove it plausible that she could not have pleaded her fear of female genital mutilation earlier and that this claim, including the medical statement that

she had submitted, was not based on a new fact or changed circumstance that required a new examination of the case. Moreover, it found that she had not sufficiently supported with documentation her argument that she did not belong to the group of 5 per cent of women who could avoid female genital mutilation; and that her allegations were too speculative and uncertain to assume that there was a realistic and foreseeable risk of torture if returned to Guinea. In this regard, it stated that the fact the she was a victim of female genital mutilation was not sufficient to conclude that she would be a victim again, since, inter alia, she had not proved that potential perpetrators were aware of the restorative surgery that she had undergone in the Netherlands. The complainant appealed the Regional Court's ruling before the Council of State.

2.7 On 16 January 2014, the Administrative Jurisdiction Division of the Council of State declared her request for higher appeal manifestly ill-founded.

The complaint

3.1 The complainant submits that the Netherlands would violate her rights under article 3 of the Convention by forcibly removing her to Guinea. She claims that the State party's authorities failed to assess adequately the risk she would be subject to if returned. The State party's authorities arbitrarily considered that her fear was speculative and did not take into account that that she is a victim of female genital mutilation and that such mutilation is widespread in Guinean society.

3.2 The complainant points out that the Office of the United Nations High Commissioner for Refugees (UNHCR) has stated that a woman or girl who has already undergone the practice of female genital mutilation before she seeks asylum, may still have a well-founded fear of future persecution. Depending on the individual circumstances of her case and the particular practices of her community, she may fear that she could be subjected to another form of [female genital mutilation] and/or suffer particularly serious long-term consequences of the initial procedure.[1] In her case, she went through the horrific experience of being the victim of such mutilation in Guinea prior to her departure. Furthermore, since she underwent reconstructive genital surgery in the State party, the risk of being revictimized is even higher.

3.3 The complainant points out that about 96 per cent of women in Guinea have undergone such mutilation — with a prevalence of 94 per cent or above in four out of the five regions of the country — and submits that this phenomenon constitutes a consistent pattern of gross, flagrant or mass violations of human rights.[2] The pressure to undergo such mutilation does not solely come from direct family members but is a common feature of Guinean society. In this regard, she highlights that Guinea is a strictly patriarchal society; that a woman is considered immoral if she does not live with her family; that a Guinean man will not marry a woman who is not circumcised and will demand her to be circumcised; and that female genital mutilation is considered a requirement for any woman's participation in Guinean society.[3] In the light of the foregoing, the complainant claims that she runs a real and foreseeable risk of being forced to undergo such mutilation

[1] The complainant refers to UNHCR, "Guidance note on refugee claims relating to female genital mutilation" (2009), paras. 13-15.

[2] The complainant refers to United Nations Children's Fund (UNICEF), *Female Genital Mutilation/Cutting: a statistical overview and exploration of the dynamics of change* (2013), pp. 26-28.

[3] The complainant refers to United Nations Population Fund/UNICEF, *Joint programme on female genital mutilation/cutting: Accelerating change - Annual Report 2012*; and the Human Rights Committee's findings in communication No. 1465/2006, *Kaba v. Canada*, Views adopted on 25 March 2010, para. 10.2.

again and of a treatment contrary to article 3 of the Convention, should she be returned to Guinea.

State party's observations on admissibility and the merits

4.1 On 8 August 2014, the State party informed the Committee that it did not wish to challenge the admissibility of the complaint.

4.2 On 18 February 2015, the State party provided its observations on the merits. As to the facts of the case, the State party points out that the date on which the complainant entered the Netherlands is unknown and that, on 20 October 2003, she submitted an asylum application pursuant to section 28 of the Aliens Act 2000. According to the State party, she based her application for asylum on the forced marriage to her stepgrandmother's brother. After a first interview, on 20 October 2003 the complainant was informed that the Dutch Ministry of Foreign Affairs would initiate an investigation in Guinea to verify her statements. She had a second interview to give her an opportunity to elaborate on her asylum application. The interviews were carried out in Fula and French with the help of an interpreter. The complainant could also make written substantive changes and/or additions to the reports of the interviews.

4.3 On 12 March 2004, a person-specific report was issued by the Ministry of Foreign Affairs. Since the complainant stated that she lived near a small restaurant called Feu Rouge in the Petit Simbaya neighbourhood of Conakry from the age of 3 (in 1990) until her departure, the investigation carried out in Guinea included this neighbourhood, where a restaurant/nightclub called Feu Rouge was found. However, neighbourhood residents did not recognize the complainant from her passport photograph. Likewise, none of the neighbourhood residents or representatives of the local authorities asked knew the people whom the complainant claimed to be her relatives, i.e. her stepgrandmother, F.D., the complainant's husband, M.S.D., his first wife, M.B., and their adopted child, M.B. Furthermore, not a single house in which the complainant could have lived was found in the vicinity of the Feu Rouge restaurant. The information that the complainant provided about her school turned out to be incorrect as well. She stated that she had attended the Batonga School in the Simbaya Cosa neighbourhood from 1994 to 2001. According to the person-specific report, the primary school called Bantonka (not Batonga) in Simbaya Cosa in Conakry closed in 1989. The building that originally housed the school has been used as a police station since then. No one living in that area recognized the complainant from her passport photograph. The State party further notes that the complainant was unable to provide evidence to successfully refute the findings set out in the person-specific report of the Ministry of Foreign Affairs. On 22 November 2005, the complainant was notified of the authorities' intent to deny her asylum application, and given an opportunity to provide comments, which she did in a letter dated 16 December 2005. On 23 December 2005, her asylum application was rejected by the Immigration and Naturalization Service, since the authorities gave no credence to her assertion that she had been forced to marry her stepgrandmother's brother. Nor did it consider her statements about her family circumstances credible.

4.4 On 17 July 2006, the District Court of The Hague, sitting in 's-Hertogenbosch, decided that the restrictions that had been placed on the complainant's access to the documents on which the person-specific report was based were justified pursuant to section 8:29, subsection 3, of the General Administrative Law Act. The State party points out that this decision was made by a different judge from the one who, on 27 June 2007, declared unfounded the complainant's application for judicial review. The State party maintains that the complainant did not lodge an appeal against the district court's judgement with the Administrative Jurisdiction Division of the Council of State.

4.5 On 13 August 2008, the complainant submitted a new asylum application pursuant to section 28 of the Aliens Act 2000, which was finally dismissed by the Administrative Jurisdiction Division of the Council of State on 28 January 2010. The State party points out that, although she was specifically asked about her mutilation in the first asylum procedure, this was the first time that she had claimed that she feared being forced to undergo female genital mutilation again.

4.6 On 21 April 2010, the complainant filed a criminal complaint as a victim of human trafficking. The criminal complaint was automatically considered an application for a regular residence permit under the B9 arrangement set out in the Aliens Act 2000 Implementation Guidelines. On 28 April 2010, a decision was taken to grant the complainant a temporary residence permit under the B9 arrangement. However, on 7 June 2010, it was decided that the complainant's criminal complaint did not warrant a prosecution and her temporary residence permit was subsequently revoked. The objection, application for review and appeal lodged by the complainant in respect of the revocation decision were declared unfounded.

4.7 As to the third application for asylum lodged by the complainant, the State party maintains that, during the interviews, she upheld that when she was 3 years old, her father took her to his stepmother in Guinea. She was raised by her stepgrandmother and she never saw her parents again. When the complainant was approximately 13 years old, her stepgrandmother forced her to undergo female genital mutilation. Two weeks before fleeing Guinea, the complainant was forced to marry her stepgrandmother's brother. She tried to persuade them not to marry her, without success. She then appealed to the district leader, but he said that she should resign herself to accepting tradition. She also claimed that she was sexually abused by her stepgrandmother's brother. She thus decided to flee and left Guinea in September 2003.

4.8 The State party provides a detailed description of the asylum procedure. An alien may file an application for judicial review to the District Court of The Hague against a denial of asylum by the Immigration and Naturalization Service. In principle, the applicant may await the result of the application for review in the Netherlands. Afterwards, the person can appeal the district court's judgement to the Administrative Jurisdiction Division of the Council of State. However, an alien who lodges this appeal may not, in principle, await the decision in the Netherlands.

4.9 The State party points out that, according to the country-specific asylum policy of the Ministry of Foreign Affairs for Guinea, discrimination and violence against women are widespread, despite the condemnation by the Government of Guinea of these practices. A victim of violence, domestic or otherwise, can report the violence to the police, but in practice the police hardly ever take action. Most victims of rape do not report the crime to the police because of the social stigma associated with rape. In the asylum policy, it is also stated that:

> Genital mutilation is practised by all religious and ethnic groups and in every region. It is prohibited by law, but the social pressure to submit to it is very high, and it is virtually impossible for women in rural areas to escape genital cutting. However, in the cities there are potentially ways to avoid it. Women who are economically independent, highly educated or have a partner who respects their choice not to allow their body to be mutilated have a better chance of avoiding it. If a woman has not undergone genital cutting and cannot avoid it in her country of origin, there might be a real risk of a violation of article 3 of the European Convention on Human Rights (ECHR). In that case, a temporary asylum residence permit might be issued

pursuant to the Aliens Act 2000. The individual concerned needed not have sought the protection of the authorities.[4]

4.10 The State party also highlights that its country-specific asylum policy for Guinea also states that when a woman demonstrates that she has a credible fear of violence or female genital mutilation, there is not a reasonable case for assuming that she can rely on the protection of the authorities. According to various public sources, such mutilation is widespread in Guinea, affecting 96.9 per cent of all girls and women, despite the fact that the practice is prohibited by law.[5] It occurs across all religious and ethnic groups and geographical areas. The percentage of women who have been cut is highest among the Peul, the ethnic group to which the complainant belongs. At the same time, the Guinean authorities are working to eradicate this practice through information and prevention campaigns in cooperation with international organizations, such the United Nations Children's Fund (UNICEF) and the World Health Organization. Some of the campaigns have led to positive, albeit modest, improvements. The State party points out that the incidence of such mutilation is falling in urban areas and, although to a lesser extent, in rural areas. According to the population survey of 2012, genital mutilation had been carried out on 14 per cent of girls aged 0-4 at the time, 51 per cent of girls aged 5-9 and 80 per cent of girls aged 10-14 (75 per cent in urban areas and 82 per cent in rural areas). There were differences between the Kissi (64 per cent) and Peul (91 per cent) ethnic groups; between uneducated (81 per cent) and educated (74 per cent) women; and between poor (92 per cent) and rich (68 per cent) women. It is highly unlikely that the oldest girls in the 10-14 age group who have not been cut will ever be subjected to genital mutilation. There is no age limit, but figures show that only 2.4 per cent of women are subjected to genital mutilation when aged 15 or older. Among the 15-19 year olds surveyed, 1.2 per cent were subjected to genital mutilation while in this age category.

4.11 Furthermore, according to public sources girls who are 14 years old or older can avoid female genital mutilation, especially those who live in cities, where there is less social control than in the villages. Today, more and more parents, especially those who live in cities and those who are well educated, do not want their daughters to be cut and so they protect them until they are grown. Once grown, the young woman can decide for herself whether she wishes to undergo genital cutting. According to the sources consulted for the country report issued on 20 June 2014, the situation for girls and women in Guinea who have not been cut and wish to avoid genital mutilation has improved somewhat since the country report of March 2013. Many girls who wish to avoid the social pressure of village life move in with relatives in the city. A girl who goes to the city but has no family there is directed to the district leader. He finds her a community in the city that will take her in (even if only temporarily) and help her to find a job.

4.12 As to the complainant's case, the State party points out that the authorities conducted an investigation in her country of origin to confirm her statements, thereby alleviating the burden of proof placed upon her to establish the veracity of her accounts. In this connection, she was interviewed several times during her asylum application procedures and questioned on the facts and circumstances of her departure from Guinea. She was also given the opportunity to submit corrections and additions to the reports of these interviews, and to respond to the notifications of intent to deny her asylum

[4] The State party points out that, at the moment its observations were submitted, the most recent country report on Guinea was dated 20 June 2014.

[5] The State party refers to: Committee against Torture, concluding observations on Guinea in the absence of its initial report (CAT/C/GIN/CO/1), para. 17; United States of America, Department of State, "Country report on human rights practices for 2013: Guinea", 27 February 2014; and the Netherlands, Ministry of Foreign Affairs, country report dated 20 June 2014.

applications. The asylum procedures thus offered her sufficient opportunities to satisfactorily establish the veracity of her accounts. Those accounts were carefully assessed by the Immigration and Naturalization Service and reviewed by an independent court as well as by the Administrative Jurisdiction Division. Although the human rights situation in Guinea gives cause for concern, in view of information from various public sources,[6] the State party maintains that there is no reason to conclude that the complainant's expulsion to Guinea would in itself involve a risk of contravention of article 3 of the Convention.

4.13 The State party refers to the investigation conducted by the Ministry of Foreign Affairs, as reflected in the person-specific report of 12 March 2004, and maintains that, owing to the incorrect information provided by the complainant to the authorities, her allegations that she was the victim of a forced marriage to her stepgrandmother's brother and her accounts about her family circumstances are not credible. It also did not allow its authorities to investigate various aspect of her alleged fear of being forced to undergo female genital mutilation again.

4.14 The State party also submits that the complainant is unlikely to be subjected to female genital mutilation again upon returning to Guinea. It maintains that it has no reason to doubt that the complainant was forced to undergo such mutilation when she was 13 years old, as stated during her second asylum application. Nor does it dispute that she had corrective surgery in the Netherlands. However, since she has already been subjected to such mutilation in accordance with her country's tradition, it is unlikely that she would be subjected to it again as an adult, as she has already undergone the procedure and repeat procedures are extremely rare in Guinea. There is no evidence to suggest that, upon returning to Guinea, she would be forced to submit to an examination that would reveal that she has had corrective surgery; or that her stepgrandmother's brother or any other relative or member of her ethnic group would force her to undergo such mutilation again. As an alternative, she can settle elsewhere, in a city, for example. With or without the assistance of the district leader, she can build a life for herself without her family having to know that she is back in Guinea. Furthermore, a long time has passed since the complainant left Guinea and there is no reason to believe that her stepgrandmother and husband would still be actively looking for her. As to the complainant's allegations about the risk of being forced to undergo female genital mutilation owing to social pressure, the State party maintains that only 1.2 per cent of genital mutilation procedures are carried out on women over the age of 19. This information implies that young adult women may decide themselves whether or not to undergo genital mutilation.

4.15 In conclusion, the State party notes that the fact alone that the complainant was a victim of female genital mutilation in the past, like 96.9 per cent of girls and women in Guinea, does not mean that her return would be contrary to article 3 of the Convention. She has provided no convincing arguments to support her claim that she would be subjected to genital mutilation again. Furthermore, there is no reason to believe that she could not settle in a different area to where she had been living when she underwent the procedure and where she might encounter those who cut her.

Complainant's comments on the State party's observations on admissibility and the merits

5.1 On 9 June 2015, the complainant provided her comments on the State party's observations. In those comments, she claims that the assessment of her credibility carried

[6] See the Netherlands, Minister of Foreign Affairs, country report dated 20 June 2014; and United States, Department of State, "Country report on human rights practices for 2013: Guinea", 27 February 2014.

out in the proceedings concerning her first and second asylum requests, including the person-specific report, are not relevant in the light of the corrective surgery she underwent in the State party, as that surgery should be considered a new fact. She claims that she has refuted the findings as to the credibility of her account in the first asylum application; and that she has provided many details, some of which have been confirmed. In particular, it is not challenged that she is a woman from Guinea who belongs to the Peul ethnic group; that 95 per cent of women in Guinea are subjected to female genital mutilation; that she was forced to undergo such mutilation; and that she underwent reconstructive surgery. These facts are sufficient to conclude that there are substantial grounds to show that she would be subjected to mutilation if returned to Guinea.

5.2 The complainant reiterates her allegations and points out that, according to the plastic surgeon who practised the reconstructive surgery, she may be perceived as a woman who did not previously undergo any form of female genital mutilation. Hence, her fear of such mutilation is the same as that of a person who would undergo it for the first time. She further argues that her situation is very exceptional and that, therefore, the State party's observations that refer to information concerning the practice of further or repeated genital mutilation in Guinea is not relevant to her case. The fact that the complainant already underwent such mutilation is a strong indication of the high probability that she will be forced to undergo it again.[7]

5.3 The complainant submits that the State party's observation that girls or women over 14 years are unlikely to be forced to undergo female genital mutilation and the observation regarding alternative relocation rely on information from its country report about such mutilation in Guinea. Although the country information is of paramount importance, it lacks substantiation, since it does not indicate the sources of this information. The State party's argument should be supported by objective and verifiable sources.

5.4 The fact that the applicant's relatives may not be aware of the reconstructive surgery or that they would not submit her to a medical examination upon return is not sufficient to conclude that she would not be at risk, since she fears genital mutilation by any member of Guinean society.

5.5 The information on the percentage of female genital mutilation performed on girls and women above the age of 14 years corresponds with the undisputed fact that the practice's prevalence in Guinea is over 95 per cent and that such mutilation it is practised on girls before they turn 14 years old. Furthermore, evidence of the high percentage of women who were victims thereof does not correspond with the State party's argument that the complainant may relocate to another part of Guinea and avoid genital mutilation.

State party's additional observations

6.1 On 24 July 2015, the State party submitted additional observations, in which it reiterates its previous observations and maintains that the information to which it referred in those observations is derived from the country report issued by the Ministry of Foreign Affairs. A country report is drafted on the basis of multiple sources, including reports by international organizations (inter alia, UNHCR reports), other States and well-known non-governmental organizations with a presence in the field.

[7] The complainant refers to: the Committee's general comment No. 1 (1997) on the implementation of article 3, para. 8; and article 4 (4) of directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

6.2 The State party points out that the complainant's situation is not similar to those of women and girls who were never subjected to female genital mutilation. She already underwent mutilation and there is no evidence to suggest that upon return she would be subjected to a medical examination that would reveal the surgery undergone. Furthermore, no individual circumstances have been brought forward by her to indicate that, in her case, there is a real risk of this occurrence. Although female genital mutilation is widespread in Guinea, this does not change the fact it is usually instigated by the girl's parents, usually the mother. If the mother does not wish to have her daughter circumcised, other female relatives may instigate it. This, however, in no way supports the complainant's allegation that she would be at risk from other members of Guinean society.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee notes that, in the present case, the State party has not objected to the admissibility of the complaint and considers that all the admissibility criteria have been met. Accordingly, the Committee declares the communication admissible and proceeds to its consideration of the merits.

Consideration of the merits

8.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all the information made available to it by the parties.

8.2 In the present case, the issue before the Committee is whether the return of the complainant to Guinea would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Guinea. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

8.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee recalls that the burden of proof

generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.[8] Although, under the terms of its general comment No. 1, the Committee is free to assess the facts on the basis of the full set of circumstances in every case, considerable weight is given to the findings of fact that are made by organs of the State party concerned (para. 9).[9]

8.5 In the present case, the Committee takes note of the complainant's allegations that, should she be returned to Guinea, she would be subjected to female genital mutilation by her relatives or other members of Guinean society. In support of her claims, the complainant points out that it is not refuted that she belongs to the Peul ethnic group; that female genital mutilation is widespread in Guinea, in particular among this ethnic group; that she was forced to undergo such mutilation in Guinea when she was 13 years old; and that, in 2013, she had genital reconstructive surgery while living in the State party. She also argues that, owing to this genital reconstructive surgery, she could be perceived as a woman who had never undergone female genital mutilation; and that the pressure to undergo such mutilation is not limited to direct relatives but is a common feature of Guinean patriarchal society.

8.6 The Committee also takes note of the State party's arguments that its authorities have thoroughly examined the complainant's allegations when examining her three asylum requests, finding that her accounts were not credible; that the fact she was a victim of female genital mutilation and that she underwent genital reconstructive surgery are not sufficient to conclude that she is at risk of being subjected to this practice again; that there is no evidence that she may be subjected to examination upon return to Guinea that would reveal the reconstructive surgery; that the country report of the Ministry of Foreign Affairs indicates that such mutilation is mainly practised on girls before they turn 14 years old; and that only 1.2 per cent of women above 19 years old are subjected to it.

8.7 The Committee observes that, although female genital mutilation is forbidden by law in Guinea, it is still widespread in the country, with a prevalence of approximately 95 per cent among girls and women and 91 per cent among members of the Peul ethnic group. The State party maintains that only 1.2 per cent of female genital mutilations are carried out on women over the age of 19. This figure, however, could be explained by the fact that the vast majority of mutilations happen when the victims are under the age of 14 and not yet married. It does not reduce the risk faced by unmarried women over 19 perceived not to have been subjected to it during their childhood or adolescence. In this connection, the Committee notes that such mutilation causes permanent physical harm and severe psychological pain to the victims, which may last for the rest of their lives, and considers that the practice of subjecting a woman to female genital mutilation is contrary to the obligations enshrined in the Convention.

8.8 In the present case, the Committee recognizes the efforts made by the State party's authorities to verify the complainant's accounts by carrying out an investigation in Guinea as part of the first asylum proceedings. Although the complainant has failed to provide elements that refute this investigation's outcome, as reflected in the person-specific report of 12 March 2004 (see para. 4.3 above) that concluded that the information provided by her about her and her family's circumstances in Guinea was incorrect, the Committee considers that such inconsistences are not of a nature as to undermine the reality of the prevalence of female genital mutilation and the fact that, owing to the ineffectiveness of the relevant laws,

[8] See also complaint No. 203/2002, *A.R. v. the Netherlands*, decision adopted on 14 November 2003, para. 7.3.

[9] See, inter alia, complaint No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

including the impunity of the perpetrators, victims of female genital mutilation in Guinea do not have access to an effective remedy and to appropriate protection by the authorities.[10] In the complainant's case, she has already been subjected to it on one occasion, with severe consequences to her physical and psychological integrity. She undertook reconstructive plastic surgery since she did not like her body and was unable to establish a relationship with a man (see para. 2.4 above). Against the background of the situation faced by girls and women in Guinea, as reflected in reports provided by the parties, the Committee is of the view that in assessing the risk that the complainant would face if returned to her country of origin, the State party has failed to take into due consideration the complainant's allegations regarding the events she experienced in Guinea, her condition as a single woman in the Guinea society, the specific capacity of the authorities in Guinea to provide her with protection so as to guarantee her physical and mental integrity and the severe anxiety that her return to Guinea may cause her within this context. Accordingly, the Committee finds that, taking into account all the factors and in the particular circumstances of this case, substantial grounds exist for believing that the complainant will be in danger of treatment contrary to article 1 of the Convention if returned to Guinea.

9. In the light of the above, the Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Guinea by the State party would constitute a breach of article 3 of the Convention.

10. The Committee is of the view that the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Guinea or to any other country where she runs a real risk of being expelled or returned to Guinea. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.

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[10] See Committee's concluding observations on Guinea (CAT/C/GIN/CO/1), para. 17. See also Committee on the Elimination of Discrimination against Women, concluding observations on the combined seventh and eighth periodic reports of Guinea (CEDAW/C/GIN/CO/7-8), paras. 28 and 30.